No. 13058

United States
Court of Appeals
For the Ninth Circuit

A. F. LEVY, Administrator,
Appellant,

vs.

JOHN E. SISSON and DORIS FISCHER,
Appellees.

Appellant's Reply Brief

Appeal from the United States District Court for the Southern District of California
Central Division

A. F. LEVY,
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In Propria Persona.

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REPLY STATEMENTS

I.

Levy, now files his "Appellant's *reply brief*" (R. B.) replying to "Appellee's answering brief" (A. B.) in response to "Appellant's *Opening Brief* (O. B.) and Clerk's printed "*Transcript* of Record" (T. R.) as distinguished from the Original *certified Record* (C. R.) from which it was made. In pursuance of (T. R. p. 24) and *ninth* circuit *court rules* (9th C. R. Rule 6).

In transcribing paragraph III from (T. R. p. 4) to page 24 and again (O. B. p. 2, line 2) section 43 was inadvertently omitted. This section in addition to the last paragraph of Sub. 2 of 47 supra, prohibits "*every person*" as distinguished from "two or more persons" from subjecting or "causes to be subjected, and again from "conspire for the purpose of . . . defeating . . . the due course of justice" without regard as (or not) of a color of any statute etc." While 1343 supra appears to be a combination of both.

Paragraph III is controlling as aforesaid and constitutes the last paragraph of "Statement of Facts." (O. B. p. 2.) Page 1 therein covers the pleaded facts, answered by "Statement of Pleadings and Facts" (A. B. pp. 1-2) and admitting with Appellant that the jurisdictional facts (O. B. p. 2) are correct, subject to this court's approval. What they say, (A. B. p. 4 c.) makes it uncertain. There they mention "civil rights" and acknowledge "Not one revelant case or statute has been cited" (O. B. p. 9, L. 1) by failing to deny it and then cite in mock fashion the same cases they cited below, all of which arise under the general laws, without any relation to the special civil right statutes aforesaid. Filed twice before. (C. R. Filed 4/28/51 and 5/22/51 with Motion to dismiss.)

II.

By not denying they admit that 1331 (amount involved) and 1332 (citizen diversity) (O. B. p. 9, last line) are general statutes not appliable to 1343. Otherwise there would be no object in filing an opening brief. Scott case: premature starting train (1331-2) has nothing about 1343. (See footnote 5-6 under 1343 and *Bottone v. Lindley,* 170 Fed. 2nd, 705, Syl. 2.) Arlac case: No Federal question. Plaintiff therein had no legal interest in the judicial relief sought. Civil rights not involved. Since they deny nothing in their "Statement of Pleadings and Facts," they admit everything, (pleaded and jurisdictional facts) in appellants "Statement of Facts" is true and that they violated all the 5 code sections et al. Then they bring in new matter instead, that makes little if any sense.

III.

After admitting their misuse and abuse of the sections they were sworn and paid to uphold they want to belittle and discredit, by saying "Appellant filed a complaint labeled "Damages $5,412.16." Nobody put any label on it. The original complaint was sent up. It is entitled "Damages" as shown (R. T. p. 3) to furnish the grounds for laying the claim that follows it. Then "complaint contains a conglomerate of many allegations in a single *Cause* of *Action.*" In *Mullen v. Fitzsimmons vs. Connell Dredge and Dock Co.,* 172 Fed. 2nd, 601 (5) c.c.a. 7th, says you can even confound them and that's worse than conglomerating.

Containing a "single cause of action" in any form, is all the law requires.

IV.

Paragraph I (T. R. p. 3) shows "appointment of Administrator." II. Shows defendant's status relating to said administrator. III. Jurisdictional requirements. IV. Inheriting victim tries to escape her oppressors but is forced to return, unto death. V. Oppressors become defeated will contestants, but overpower will opponents, wreck estate, defeating creditors then abandon it. VI. Oppressors through fake heirs, have assigned interest that belongs to judgment creditors, and defendant administratrix joins them. VII. Then enlists aid of civil court judge. VIII. Try to intimidate judgment creditors representative who tries Federal court herein. What's conglomerated?

V.

What's purported copy and hence incomplete? Exhibits are true copies of original court papers, by law made, final conclusive and unanswerable. The evidence of the ultimate facts set out in the complaint, to prove said facts if this court grants a trial. If exhibits contradict the facts in complaint, Appellee brings them up. (9th C. P. 19-6.) Or denies letters if a trial is granted.

VI.

Concluding: (A. B. p. 2) is a needless repetition of the court order dismissing Action, (T. R. p. 19). Elevating the judgship name and changing the middle initial. The omitted part for convenience here says, page 20:

> "Said motions having been so granted, and the action dismissed, the Motions for judgment on pleadings, motion for more definite statement, etc., and motion to strike of said defendants were with the consent of said defendants withdrawn."

The defendants must have an awful "pull" to get into any court with that chicane, (O. B. p. 8, last sentence) also in violation of F. R. C. P. (54(a)). Prohibits recitals of pleadings. And the Justice? was most fortunate in getting the defendant's consent. No wonder the judge signed without approval, (p. 8, id.). "No motion for judgment on the pleadings" under rule 12(c) id. until after the pleadings are closed, hence premature. (*Buris v. Stoudt,* 2 F. R. D. 219.) More definite statement is out too, 12(e) id., requires that motion "shall point out the defects complained of and details desired," and he didn't do it. (T. R. p. 15 VI.) Rule 12 F. id. provides the Court "may strike *insufficient defense,* redundant, immaterial impertinent or scandalous matter" from any pleading. Every one of his defenses except "claim upon which relief can be granted" are unauthorized "insufficient defenses" so if there was any improper matter in the

complaint he was barred from asserting it. But there is none. Only the defenses provided in 12 B under the 7 subdivisions thereunder are allowable on a motion to dismiss.

VII.

It was the court's duty under Rule 12 H.(2) to dismiss the action on the ground "that the court lacks jurisdiction of the subject matter" in pursuance of paragraph II. of the Defendant's motion to dismiss the action on F.R.C.P. rule 12 H.(2) "that the court lacks jurisdiction of the subject matter" instead of the stupid order that excludes amendments to the Constitution (T. R. 20-1) or read the amendment as though it said: (2nd paragraph) "No state shall deprive any person (of another state) of life, liberty or property, without due process of law, (unless the amount exceeds $3,000). Then again in (1) where it says: "That said complaint fails to state a claim. (See O. B. 8, Lines 11 to 13.) Instead of the last reference is meant: "Failure to state a legal defense" as provided in F.R.C.P. 12 H.; then said question as the rule provides: "May be made in a latter pleading." The only question therefore is: "Do the facts stated in the complaint invoke the court's jurisdiction under the special civil rights act?" Such incompetency upon the judge and defendant's part, is not so repressible as their audacity in overthrowing the court rules, (which are said to be in the breast of the court) and then refusing to comply with them when brought to

their notice in a noticed hearing. (T. R. p. 21, Lines 10 to end.) See also, (O. B. p. 8, last paragraph).

VIII.

Appellees admit "Statement of the Case" (O. B. pp. 2 to 4) extracted from the ("conglomerated") complaint as provided by (9th C. Rule 20.3). And also "substantial relation of coherent facts," "unrelated conclusions," "impressions and scurrilous matter," "proper remedy and jurisdiction," "exhausting state remedies before application to Federal courts," have already been decided by them. The usual method, is for counsel to submit, statutes, cases *in point*, tenable argument, showing wherein the improper remedy and jurisdiction lies: Why and wherefore state remedies must precede Federal authority; and pointing out wherein lies the incoherent facts, unrelated conclusions, scurrilous matter and defects as the appellant has done, so the reviewing court can render an intelligent opinion. Not in one instance have they done this.

Thousands of gangster lawyers in collusion with gangster judges have and are depriving hundreds of thousands of persons of the right to the use of the courts. Is that what is meant when he says: "Disagreement and criticisms of judicial decisions of other courts of competent jurisdiction. Or does he mean as in the instant case: criticizing the right of throwing the case out of court, so no final judgment can be made to criticize? They know the difference between a judgment and a judgment order dismissing an action, but

all gangster lawyers, in the abusive misuse of the law as a tool for robbery, are very skillful in tautology, chicanery, petifoggery, sophistry, cavilling and rascally practices. They refuse to discuss the only case in point, (O. B. p. 9) cited 56 Fed. Supp. 169 supra.

IX.

THE ALLEN CASE

It would be extremely difficult to draft a complaint for labor performed that "fails to state a claim upon which relief can(not) be granted." Any statement contrary would border on the fringe of absurdity. Justice Corsano, after suit by Allen for refusing to issue process etc. for him, should have moved for dismissal under 12 B. 7. "Failure to join indispensable party." Instead of 12 B. 6. (id. less not). Having so failed, Judge Leheay should have denied the motion, requiring Corsano to answer, in which he could in addition have renewed the same motion under 12 H., which if he had done so, (he did not) would require dismissal of Allen's complaint, without prejudice. Thereby giving Allen the opportunity of obtaining the true name of the required defendant conspirator, as required by T. 47 (2) supra "two or more persons." He named a class of state officials, not a person. Therefore Judge Leheay, inadvertently, but needfully, rendered an opinion in a case where his powers to do so were never invoked.

Corsano has shown that his solemn oath is not sacred at all and that, as far as his court is concerned, justice like pork or beans is a commodity, and one may with impunity get anything they want for a price, since his salary is the smallest part of his income. Since every employee owes a certain amount of fidelity to his employer, every person using the courts has a right to believe that a person sworn under oath, (and the least they will settle for) that when an officer is called upon nothing more than to perform a ministerial duty—he will not refuse to do it. When a thing must be done one way and there is no other way to do it, then it ceases to be discretionary any longer. Where one is vested only with ministerial duties, alone, he cannot perform if the statute is not clear as to what his duty is and then must look to the courts for interpretation.

The failure to seek mandamus, is the crucial point of the decision. All of the authorities, (and there are lots of them) agree that the Federal court is the proper place to determine Federal questions, without first exhausting or requiring one to use state courts for this purpose. Where no reason or precedent is shown, the opinion must be accepted with caution as nothing more than to defeat the individual suitor, and cannot be followed by the court below, and may as well to never have been rendered. The cited Corpus Juris text book holds that mandamus is the remedy where a court abuses its discretion or without or in excess of its jurisdiction.

X.

Corsano has no discretion to abuse and though he had plenty jurisdiction he was not without; but he misused it by not using it but abused the law instead of giving effect to it. Courts existing for the correction of errors, are not classed in Corpus Juris or anywhere else with the courts of impeachment. The courts in Delaware are not functioning and most probably mandamus would have been denied Allen no matter how cogent the reasons for its issuance may be. Otherwise Corsano would not have refused to perform in the first instance, or if granted, he would have to disqualify Cardosa who in turn would influence any continuance of the suit to Allen's defeat. As set forth above this is not a hazard that every suitor must expect. Just the contrary is true. If there is any merit in the Constitution, then why not give effect to it in accordance with the laws made in pursuance of it, by the Congress? The Constitution loses its virtue the moment its procurement is impeded by state law requirements or Federal Courts impose such requirements before it can be made available. It cannot function properly in the shadow of chance or hazards.

XI.

If some bonded state official, whose name is ascertainable in concert and conspiracy with Cardosa, and in furtherance of that conspiracy, Cardosa refused to issue process etc., and it was done in the regular performance of their duties under color of law, then Judge

Leheay could not dismiss Allen's complaint, because the Federal Court had jurisdiction of the subject matter. The refusal constituting the overt act. This overt act though obnoxious to the State, is none the less the act of state officers, that are depriving him of the regular or due process of law. And any persons whether they be state officers or not that acted in concert to produce this deprivation are likewise liable, if injury results therefrom.

It has the same effect as though the state had passed a law that prohibited all persons whose name begins with the letter "A" from using the courts for the recovery of a valid claim, thereby denying them the equal protection of the law, which other persons with different names may enjoy. Judge Leheay, by his opinion, appears to be very honest. He admits that he is pioneering in a somewhat unexplored field and though not infallible, he appears to maintain the regular course of law in his court, while the instant case does not.

XII.

Appellee Fischer openly, brazenly and boldly, directly in the face of the admonition of the appellant and the special statute for the protection of estate creditors, that the distributive share shall not be paid to the heirs. Thereupon by practicing fraud upon the court, she obtains a void decree making it payable to the heirs. Any judge, to uphold his own honor and dignity, would gladly vacate such a decree if it were

in his power to do so. Subtly she sought delayed payment until the creditor's representatives complained, at which time she would advise that she already had complied with the terms of the decree though she know it was void, but valid because her lawyer had falsely said so. The law is not conglomerated. Judge Green, by sustaining the demurrer, joined the conspiracy, together with the administratrix as the second state official acting under color of law in the supposedly or regular course of his duties. Unless the former, appointed and bonded unto the State of California is not deemed to be such.

In the 16th century (1610) during the reign of Elizabeth the first laws were passed to protect creditors. California law requires "notice to creditors" be published, which was not done until six years late and after the entire estate had been devastated, except the $375.98 aforesaid. Many laws have been passed since then and the records are cluttered up with cases for centuries. The laws of California like those of Delaware have broken down; gangster judges and lawyers have taken over and we have no laws to meet this situation, that the Federal courts will enforce. If the appellant, as administrator, fails to collect the assets of his estate and pay the creditors, then he becomes liable to the creditors for failure to do so. On the other hand if he attempts to do so, all the constituted authorities flout the law and prevent him from doing so. So relief from the Federal court must be the answer, until then the appellees are causing the creditors to be sub-

jected to the continued deprivation of their adjudged property.

CONCLUSION

Our form of government is under attack in foreign countries. If we cannot defend it here how can we defend it there? Lincoln said: "If ever our form of government will be destroyed, it will be from within and not from without." The highest forms of government have always perished, when the judicial branch did not function. Judicial robbery, kidnaping and slavery pervade the entire nation. In Pennsylvania there is a case where both the judicial and executive authorities aid and abet in a most sadistic murder. The Rosenbergs have been sentenced to die for giving away the secret of the atom bomb, and upon their execution Federal Judge Kaufman becomes the world's best known judicial murderer. No one can say that the United States is a country that should be entitled to the exclusive use of such a dangerous weapon, so what are they being punished for? We pass laws trying to prevent persons from overthrowing our form of government through force and violence and yet judicial force and oppression is the only thing our courts will recognize. If you say this to a native American, he is apt to say: "All those judges are alike" but foreigners look at you with awe and amazement and generally reply: "Such things could never happen in my country." Cardosa like Green hide their rottenness in

silence and thereby fall below the standard set by Hitler. We all heard him over the radio in an attempt at least to defend his atrocious behavior. When judges let their honor fall below the little honor we expect to find in thieves, then no wonder we are confronted today with all forms of hoodlum gangsterism. The records of the high state courts in California show the worst forms of law abuse, robbery and fraud, with the Supreme Court acting as a "rubber stamp" of approval. And the appellees suggest the same procedure in the Federal courts. State law provides severe penalties against those who misrepresent court proceedings, but no restrictions have yet been placed on those who speak the truth. The individual has no right in the courts. They exist to do the bidding of the corporations, gangsters and the special interest groups. Sure, I speak reproachfully, I bitterly denounce these gangsters who turn the pride of the gold star mother into shame, and accuse those who oppose them of using scurrilous matter because they speak boldly within the final conclusive and unanswerable record.

Appellant, by the statutory requirement in attempting to perform his duties, is not personally liable for any costs herein. Nor is there any way to impose any liability against the estate which he is attempting to administer. Any court, if it will, can render an opinion to defeat any suitor, but if not based upon law or well reasoning, the Appellees are liable in another action for Appellant's costs herein. The law belongs to the people and the Constitution vests no absolute right in this or

the highest Federal court. If their opinions are with color of law, but not acceptable, Congress can change the law within the Constitution. If without color and Congress refuses to take over, then there is no reason why the communists should not.

Should the court adopt the Appellee's suggestion, then it should be mindful of the immortal Lincoln precept: "Those that deny freedom to others do not deserve the right to claim it for themselves, and under a just God, may not long retain it."

Respectfully submitted,

A. F. LEVY
Estate Administrator.

Dated at Los Angeles, Calif.
Dec. 12th, 1951.